

enhances Byerly et al and Bucci. By excluding the consent step and the end user selection process, both Byerly et al and Bucci are permitted to proceed in servicing end users whether the end users like it or not. By eliminating the consent step and end user selection process in Byerly et al and Bucci, the end result is more end users, where those end users do not require any option-enabling resources. This is different from the Applicant's desires in using a consent step and end user selection process. In the Applicant's disclosure, seeking users that consent, where those end users select their own health reminders, as well as where those end users provide additional preference information with regard to notification parameters, text, etc., serves one of the Applicant's intended purposes, which is to have the end users actually heed the health reminders they receive. The Applicant feels that allowing end users the ability to mold their health reminders in a manner that is most comfortable will go far in enabling maximum effectiveness of the health reminders.

At this time, the Applicant, with great respect, questions the Examiner's combination of Bucci and Byerly et al in view of MPEP section 2143.01. There are two sections of MPEP section 2143.01 that the Applicant considers relevant. Each of the two sections will be cited and discussed individually.

The first is as follows:

"THE PROPOSED MODIFICATION CANNOT RENDER THE PRIOR ART UNSATISFACTORY FOR ITS INTENDED PURPOSE"

"If proposed modification would render the prior art invention being modified unsatisfactory for its intended purpose, then there is no suggestion or motivation to make the proposed modification."

By modifying Bucci with Byerly et al, the result is where Bucci now comprises "A method for generating advisory messages to pharmacy patients" at a pharmacy. What now occurs is where Bucci is modified to comprise "A method for the consolidation, summarization and transmission of a plurality of mailable materials", that comprise bills,

target advertising and pharmacy related advisory messages "...by a plurality of differing, non-related subscribers transmitting to a plurality of pharmacy patients" at the pharmacy's point of purchase site "during a pharmacy transaction" (see Byerly et al ABSTRACT, third line down). Bucci, as well as his "plurality of differing, non-related subscribers", could become highly agitated, because the modification of Bucci with Byerly et al limits the field of end users to "pharmacy patients" where the consolidated bill now must be picked up at the pharmacy. The combination does provide a "new or unexpected result" in that the combination saves mailing costs for Bucci, being that end users now pick up their bills at the pharmacy. The modification results in an invention that is clumsy and somewhat more difficult to enable than the unmodified Bucci, and is "unsatisfactory for its intended purpose" due to the fact that the number of potential end users, now that they must now be "pharmacy patients", have been reduced considerably. It is obvious that an intended purpose of Bucci is to make his method available to as many end users as possible, and that Bucci also intends that the "sending said page of sorted accumulated informations from said plurality of non-related subscribers to said individual identified end user" be sent *directly* to the end user, and not to a pharmacy/intermediary.

By modifying Byerly et al with Bucci, the pharmacist now becomes the bearer of billing statements on behalf of "a plurality of differing, non-related subscribers". This becomes a virtually impossible situation, because a pharmacist that is comfortable with answering questions regarding medications now becomes the front line for bombardments regarding water bills, disputes about electricity usage, and credit card penalties. End users can no longer receive the consolidated bill in their mailboxes, but now must go to the pharmacy to receive their bills, and must become "pharmacy patients" to boot. The intended purpose of Byerly et al is for "generating advisory messages to pharmacy patients" that are medically related, whereas the modification by Bucci forcefully imposes that information incongruous with medically related advisory messages must also be presented. Nowhere in Byerly et al is an intended purpose to burden an already busy pharmacist with matters not relating to health or the pharmacy, so it is safe to infer that such a potential division of attention induced by incorporating non-health aspects re

Bucci, where the resulting divided attention could also prove deadly with regard to erroneously filled prescriptions, or erroneously relayed medication instructions, could render Byerly et al unsuitable for its intended purpose.

The second section of MPEP 2143.01 that the Applicant deems relevant is as follows:


**“THE PROPOSED MODIFICATION CANNOT CHANGE THE PRINCIPLE OF
OPERATION OF A REFERENCE”**

“If the proposed modification or combination of the prior art would change the principle of operation of the prior art invention being modified, then the teachings of the references are not sufficient to render the claims *prima facie* obvious.”

Very simply, the modification of Bucci with Byerly et al changes the principle of operation of Bucci by requiring a) that the end user of Bucci has the further requirement of being or becoming a “pharmacy patient”, and b) that the end user no longer receives Bucci’s consolidated statement in the mail, but must instead go to the pharmacy to receive the consolidated statement. Conversely, the modification of Byerly et al with Bucci changes the principle of operation of Byerly et al from being “A method for generating advisory messages to pharmacy patients to a means of relaying non-health or non-pharmacy related bills to end users at a pharmacy, which would further entail distracting the pharmacist with matters not relating to health or the pharmacy. One may argue that the combination could result in having the advisory messages mailed to the end user instead of being presented at the pharmacy. This also changes the principle of operation that Byerly et al considers key, where three quarters of the way down in the section of Byerly et al marked “DESCRIPTION OF THE PREFERRED EMBODIMENT”, it is disclosed “Studies have shown that patients regularly use pharmacists as a source of medical information since pharmacists are believed to act objectively for the patient’s best interests. Accordingly, having the advisory information presented to a patient by his or her pharmacist is a reliable and effective method of providing health advisory information as compared to conventional methods, such as mass mailings, targeted mailings, etc.”

By supplying the above evidence in support of the MPEP 2143.01 sections cited, the Applicant believes there is "no suggestion or motivation to make the proposed modification" of Bucci with Byerly et al, or vice versa. In light of this, combined with points raised earlier in the separate discussions of Bucci and Byerly et al, the Applicant respectfully requests that the Examiner reconsider his 35 U.S.C. 103 rejection of the Applicant's application number 09/634,612.

The Applicant once again sincerely thanks the Examiner for his immeasurable and tireless kindness, patience, and tutelage.


Ronald Rosenberger